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SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT ("Agreement") entered into effective February 19, 2002, by the MONTANA STATE BOARD OF LAND COMMISSIONERS ("Board"), whose address is P.O. Box 201601, Helena, MT 59620-1601, and the NORTHERN CHEYENNE TRIBE ("Tribe"), whose address is P.O. Box 128, Lame Deer, MT 59043.

Recitals

- A. Section 503 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105-83 ("Section 503"), provides that the Secretary of the Interior ("Secretary") must transfer to the State of Montana ("State") either (1) \$10 million in federal mineral rights agreed to by the Secretary and the Governor of Montana ("Governor") through negotiations conducted in accordance with section 503(b) of the Act or (2) all federal mineral rights in three federal coal tracts (which federal mineral rights are referred to herein as the "Otter Creek Tracts").
- B. The Governor has advised the Secretary that the State has opted for transfer of the Otter Creek Tracts, that the Secretary therefore has a non-discretionary duty to transfer the Otter Creek Tracts to the State, and that such a transfer is overdue and would not violate any federal or other law. Accordingly, the Governor has asked the Secretary to make such a transfer.
- C. The Otter Creek Tracts consist of Otter Creek Tracts Nos. 1, 2 and 3 in Powder River County, Montana, which are legally described in Exhibit A attached hereto. In total, the Otter Creek Tracts encompass approximately 8,350 acres and are estimated to contain approximately 533 million tons of recoverable federal coal. At their closest point, the Otter Creek Tracts are approximately 3 miles from the Tongue River, which serves as the eastern boundary of the Northern Cheyenne Reservation ("Reservation").

D. The Tribe is asserting the following claims in the United States District Court for the District of Columbia in the case Northern Cheyenne Tribe v. Gale Norton, Secretary of the Interior, Case No. 1:02CV00146 TPJ:

that coal-related development of the Otter Creek Tracts and adjoining areas will impose severe environmental, socio-economic and cultural impacts on the Tribe, its members and its Reservation; and

that the Secretary has a degree of discretion with respect to whether to transfer the Otter Creek Tracts to the State, and that the transfer, as currently sought by the State, would violate a number of federal laws, including without limitation Section 503 itself, the National Environmental Policy Act, the National Historic Preservation Act, and the Federal Land Policy and Management Act, and their implementing regulations, as well as the federal trust responsibility to the Tribe.

- E. The Board has concluded that, unless special measures are adopted, Indians may be excluded from employment and contracting opportunities in off-Reservation coal-related projects in the vicinity of the Reservation, such as the anticipated coal-related development at Otter Creek.
- F. The Tribe has made substantial efforts to resolve its claims about the Otter Creek transfer through negotiations with the Governor, the Board, the Montana Congressional delegation, and the owner of the private coal checkerboarded with the Otter Creek Tracts (Great Northern Properties LP). As a result of these negotiations, a settlement proposal consisting of the following has been developed:

the Operating Plans provisions set forth in Exhibit B attached hereto, to be agreed to by the Board in section 1 of this Agreement;

certain commitments of support by the Board set forth in section 2 of this Agreement; and

a commitment separately made by the Montana Congressional delegation to the Tribe to seek enactment of the federal legislation described in Exhibit C attached hereto.

- G. The Tribe advises that, in its view, realization of these settlement objectives will for the first time provide the Tribe with a net positive stake in nearby off-Reservation coal-related development and therefore generate Tribal support for coal-related development at Otter Creek carried out in accordance with applicable law.
- H. The Board has concluded that the interests of the State are best served by resolving the Tribe's claims against the Otter Creek transfer by negotiated agreement, rather than by litigation which may disserve the State's coal-related development aspirations in the Otter Creek area, and that the terms of settlement set forth below are reasonable.

Terms and Conditions

The Board and the Tribe agree as follows:

- 1. Operating Plans. The Board agrees that when it authorizes the leasing of: (a) any portion of the Otter Creek Tracts for coal mining, or (b) any State surface lands within or in the vicinity of the Otter Creek Tracts for electric generating facilities to be fueled in whole or in part by coal mined from the Otter Creek Tracts, the Board will require, separate from the terms of the lease, that the State Department of Natural Resources and Conservation require that the Operating Plans described in the attached Exhibit B be established and thereafter implemented. Upon the establishment of an Operating Plan, the Board as necessary will direct the enforcement of such Plan.
- 2. Commitments of Support. The Board agrees to support:
 - a. improvement by the State of the following off-Reservation roads (listed in descending order of priority), to provide viable off-Reservation options for truck and other traffic engendered by coal-related development in the Otter Creek area:

Ashland to Birney Ashland to Miles City Birney to Decker

- b. cooperative and/or cross deputization agreements among the Tribe, the counties and, if appropriate, the State Highway Patrol, to improve the effectiveness of Reservation law enforcement with respect to non-Indians; and
- c. the enactment of the federal legislation described in the attached Exhibit C.
- 3. Release of Claims. The Tribe hereby waives, releases and discharges any and all claims it may have that the transfer of the Otter Creek Tracts to the State under Section 503 is in any respect unlawful. The foregoing includes any and all Tribal claims or causes of action in any administrative or judicial action or proceeding against the United States, the Secretary, the State, the Board and the Governor, and their respective officials, employees, agents and other representatives, alleging that the transfer of the Otter Creek Tracts to the State is in any respect unlawful. Upon execution of this Agreement by the Tribe and the Board, the Tribe shall dismiss with prejudice its complaint in the case Northern Cheyenne v. Norton described in recital D above.
- 4. Entire Agreement. This Agreement constitutes the entire agreement between the Board and the Tribe.
- 5. Applicable Law. The validity, construction, interpretation, and administration of this Agreement shall be governed by the substantive laws of the State.
- 6. Modification. This Agreement shall not be modified or amended except by an instrument in writing signed by the Board and the Tribe. The Programs required under the attached Exhibit B may only be modified by the Lessee in close consultation with the Tribe and with the approval of the Board.

- 7. Warranty of Authority. The Board and the Tribe each warrant that each person signing this Agreement on its behalf has all necessary power to execute and deliver this Agreement; and that this Agreement constitutes a valid, binding agreement, enforceable in accordance with its terms.
- 8. Severability. If any provision of this Agreement is determined by a State or federal court to be unlawful or otherwise unenforceable under State or federal law ("Affected Provision"), the remaining provisions of this Agreement shall remain in full force and effect and the Board and Tribe shall promptly, diligently and in good faith negotiate and agree on provisions in lieu of the Affected Provision which are designed to achieve, to the fullest extent possible, the intended purposes of the Affected Provision in a manner consistent with State and federal law.

DATED this 19th day of February, 2002.

NORTHERN CHEYENNE TRIBE

By: GERI SMALL, President

STATE OF MONTANA) ss. COUNTY OF del ()

This instrument was acknowledged before me on the day of February, 2002 by Geri Small as President of the Northern Cheyenne Tribe, on whose behalf the instrument was executed.

Notary Public

Shanon H. Stevens

[Type/Print Name]

My Commission expires: 1-10-2001

(NOTARY SEAL)

MONTANA STATE BOARD OF LAND COMMISSIONERS

Bv:

ITINEMART

BOB BROWN Secretary of State

Governor of the State of Montana

(GREAT SEAL OF THE STATE OF MONTANA)

(SEAL OF THE SECRETARY OF STATE)

ARTHUR R. CLINCH

Director, Department of Natural Resources and Conservation

(SEAL OF THE STATE BOARD OF LAND COMMISSIONERS)

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EXHIBIT A

Legal Description of Otter Creek Tracts

The Otter Creek Tracts consist of all federal mineral rights in the tracts described below, all of which lie in Powder River County, Montana:

OTTER CREEK TRACT #1:

Township 3 South, Range 45 East, MPM

Section 26: All Section 34: All

Township 4 South, Range 45 East, MPM Section 2: Lots 1, 2, 3, 4, S½N½, S½

OTTER CREEK TRACT #2:

Township 4 South, Range 45 East, MPM

Section 10: E½, E½W½

Section 12: All

Section 14: Lots 1, 2, 3, 4, 5, 6, 7, 8, W½ Section 22: N½NE¼, SE¼NE¼, E½SW¼

Section 24: Lots 1, 2, 3, 4, 5, 6, 7, 8, W1/2E1/2, E1/2W1/2

Section 26: All

OTTER CREEK TRACT # 3:

Township 4 South, Range 45 East, MPM

Section 6: Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, SE1/4

Section 8: Lots 1, 2, 3, 4, 5, 6, 7, 8, E1/2

Section 18: All

Section 20: Lots 1, 2, 3, 4, E½, E½W½

Section 22: W1/2W1/2

EXHIBIT B

Operating Plans

After the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe ("Tribe"), shall develop and submit for approval to the Montana State Board of Land Commissioners ("Board"), obtain Board approval of, and thereafter implement, the following written Operating Plans:

- 1. Employment Program. A written Employment Program designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Northern Cheyenne Reservation during the one-year period preceding their application for employment ("Indians") and to non-Indians who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County during the one-year period preceding their application for employment ("Other Local Residents"), to the extent such Indians and Other Local Residents are qualified and available and reside no more than 50 road miles from the Operations. The Employment Program shall address recruitment, training, hiring, promotion, reductions in workforce and termination for cause, in all categories of employment, and shall include:
 - a. Programs for recruitment of Indians and Other Local Residents.
 - b. Programs for training Indians and Other Local Residents, including entrylevel training, on-the-job training, and training for advancement into supervisory positions.
 - c. Preservation of the project operator's authority to establish reasonable, even-handed and job-validated training programs, employment criteria, and work rules for all project employees including Indians and Other Local Residents.

- d. Workshops for other project workforce to develop an awareness of relevant Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.
- e. A requirement that contractors and subcontractors engaged in Operations assume and comply with all terms and conditions of the Employment Program reasonably adaptable to their own employment practices.
- f. Notification to any involved labor union of the existence of the Employment Program and the project operator's duty and intent to abide by its terms, and accommodation of the Employment Program in any union collective bargaining agreement covering Operations.
- g. Employment by the project operator of a Facilitator, who shall be a qualified and available enrolled member of the Tribe approved by the Northern Cheyenne Tribal Council and acceptable to the project operator, whose principal and primary duties shall be to: (a) serve as liaison between the project operator and the Tribe with respect to the Employment Program and the Contracting Program established under section 2 below; (b) assist in facilitating the successful implementation of the Employment Program and Contracting Program; and (c) assist in resolving any problems which may arise in implementing the Employment Program or Contracting Program.
- h. A board of Administrators, consisting of equal numbers of Administrators separately designated by the Tribe and the project operator, which shall monitor compliance with and serve as a forum to discuss and resolve by agreement any disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program.
- 2. Contracting Program. A written Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members ("Tribal Contractors"), to obtain contracts and subcontracts for services or goods in the conduct of Operations at competitive prices. The Contracting Program shall include:

- a. A certification procedure under which a business entity applying for the status of Tribal Contractor must seek certification from the Administrators in the following two respects:
 - i. as majority-owned and controlled by the Tribe or Tribal Members; and
 - ii. as capable of competently providing particular kinds of contract services or goods.
- b. Notice to certified Tribal Contractors of Operations contracts and subcontracts to be awarded for which they are qualified.
- c. A requirement that project contractors and subcontractors involved in Operations assume and comply with all terms and conditions of the Contracting Program reasonably adaptable to their own project contracting activities.
- 3. On-Reservation Conduct. A written On-Reservation Conduct Program designed to encourage employees and truckers involved in Operations, while on the Northern Cheyenne Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.
- 4. Environmental Monitoring. To the extent not independently required by applicable federal or State environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Northern Cheyenne Reservation which may be affected adversely by Operations, including:
 - a. Baseline monitoring for at least one year before the initiation of any surface disturbing Operations.
 - b. Ongoing monitoring thereafter throughout the conduct of Operations, and thereafter until the completion of all required reclamation on the lands on which Operations were conducted and the release of all related reclamation bonds by regulatory agencies.

- c. Training and employment of qualified and available Indians to assume responsibility, to the fullest extent feasible, for the operation of the monitoring programs on the Reservation.
- d. In addition, full compliance by the project operator with all applicable federal and State environmental laws and regulations.
- 5. Cultural Resources. To the extent not independently required by applicable federal or State law or regulations, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significance, in the conduct of Operations, including:
 - a. A program carried out in consultation with the Tribe, to identify, record, and protect, in accordance with Northern Cheyenne standards and protections, all Northern Cheyenne historic, cultural, religious and burial sites on the lands covered by the Lease.
 - b. Re-burial, in consultation with the Tribe and in accordance with all Northern Cheyenne standards, of all Northern Cheyenne human remains and funerary objects jeopardized or disturbed by Operations.
 - c. In addition, full compliance by the project operator with all applicable federal and State laws and regulations that protect Northern Cheyenne historic, cultural and religious interests and values implicated by Operations.

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EXHIBIT C

Proposed Federal Legislation

Federal legislation will be sought which will: (a) provide federal funding to the Tribe for Reservation public services and facilities; (b) provide federal funding for certain Tribal cultural activities relating to Otter Creek and the surrounding area; and (c) rectify a claimed 100-year old federal error which deprived the Tribe of ownership of 8-1/2 sections of Reservation subsurface:

- 1. Impact Funding. The Montana Congressional delegation has advised that, in consultation with the Tribe, it will endeavor to secure the promptest possible enactment of federal legislation which will provide adequate federal funding to the Tribe for use in planning, maintaining, improving and expanding Reservation public services and facilities. The Tribe has proposed that the funding be equivalent to an average of \$6 million per year (1/1/02 dollars) and that it come from an allocation from the federal share of bonuses, rents and royalties on federal coal leases within 25 miles of the Reservation.
- 2. Funding for Cultural Programs. The Montana Congressional delegation has advised that, in consultation with the Tribe, it will endeavor to secure the promptest possible enactment of federal legislation which will provide specified and adequate federal funding to the Tribe to pay for:
 - a. a Tribally-conducted oral history program regarding Tribal historic, cultural and religious interests and sites in the Otter Creek area;
 - b. a Tribally-conducted archival research program regarding the original Northern Cheyenne homesteads in the Tongue River Valley;

- c. storage at Chief Dull Knife College of the products of the above programs and of the program under paragraph a of the Operating Plan item; and
- d. consultation by the Northern Cheyenne Cultural Commission with respect to the foregoing and all other cultural matters arising under the Operating Plan item.
- 3. GNP Exchange. The Tribe alleges that 100 years ago, the United States made an error which has deprived the Tribe of ownership of 8-1/2 sections of valuable Reservation subsurface (the only Reservation subsurface not owned by the Tribe). Great Northern Properties LP ("GNP") is the current owner of that subsurface. To rectify this claimed error and to give the Tribe a potentially positive stake in off-Reservation coal development, the Montana Congressional delegation has advised that, in consultation with the Tribe and GNP, it will endeavor to secure the promptest possible enactment of federal legislation which will provide that, in return for conveyance of the 8-1/2 subsections to the United States (it is the Tribe's preference that the conveyance be to the United States in trust for the Tribe), the United States will convey to GNP uncommitted federal coal in the State of Montana satisfactory to GNP and the Tribe. GNP will provide to the Tribe an economic interest (to be negotiated by the Tribe and GNP) in the proceeds of development of the exchange coal received by GNP.